

DISCLAIMER

This electronic version of an SCC order is for informational purposes only and is not an official document of the Commission. An official copy may be obtained from the [Clerk of the Commission, Document Control Center](#).

APPLICATION OF

**GTE COMMUNICATIONS CORPORATION
OF VIRGINIA**

CASE NO. PUC980080

**For a certificate of public convenience
and necessity to provide local exchange
telecommunications service**

HEARING EXAMINER'S RULING

September 17, 1998

On September 2, 1998, the Commission issued an Order Setting Pleading Schedule on Discovery and Appointing Hearing Examiner. Therein, the Commission appointed a hearing examiner for the limited purpose of ruling upon all discovery, other pretrial motions, and scheduling matters.

By Hearing Examiner Ruling dated September 14, 1998, the Motion for Protective Order filed by GTE Communications Corporation of Virginia ("GTE-CC" or "Applicant") which sought blanket immunity from discovery was denied. However, a procedure for handling confidential information was established. On September 16, 1998, pursuant to the Commission's Rules of Practice and Procedure and the September 14 Ruling, Motions to Compel answers to interrogatories were filed by Cox Virginia Telcom, Inc. ("Cox"); AT&T Communications of Virginia, Inc. ("AT&T-VA"); and MCI Telecommunications Corporation ("MCI").

The Protestants also jointly filed a Motion for Extension of Procedural Schedule.

Oral argument on those Motions was held on September 16, 1998. Although a number of interrogatories remained in dispute, counsel for GTE-CC represented that only three documents are responsive to all outstanding and disputed interrogatories. Those documents are (1) a financial statement for GTE Communications, (2) the roll-out plan for the proposed service, and (3) an internal communication concerning the proposed merger between GTE and Bell Atlantic.

The Protestants assert that all three documents are relevant to the pending certificate case, that the protective procedures established in the September 14, 1998 Hearing Examiner Ruling adequately protect the confidentiality of the documents, and that if further protection is warranted, Protestants would protect the information from marketing personnel.

GTE-CC counters that none of the three documents at issue are relevant, and further that they are commercially sensitive and should be protected from discovery.

Counsel for Cox further questioned the accuracy of the GTE-CC representation that the identified documents are the only ones responsive to the interrogatories propounded. He seeks a written certification from the GTE Texas counsel who conducted the search for documents confirming that they are the only responsive documents. Counsel for Cox also requests the hearing examiner to examine, in camera, all documents listed on GTE-CC's privilege log to confirm that the documents identified as protected by the attorney-client or work product privilege are accurately described.

Upon consideration of the Motions to Compel and the arguments thereon, I find that GTE-CC should be compelled to answer the interrogatories and document requests which remain in dispute. The standard for discovery in the Commission's rules requires only that information sought could lead to information that would be admissible. Although the Applicant relies on the financial information of GTE Corporation to support its financial viability to provide the service for which it seeks certification, the financial information of GTE Communications, at a minimum, could provide a more comprehensive financial picture of the GTE family, and thus insight on the potential for cross-subsidization.

The roll-out plan, similarly, could reveal the Applicant's plans, if any, to rely on the facilities of affiliate systems which is relevant to the potential for cross-subsidization and scope of the proposed service. Information on the potential merger also is relevant as a merger with Bell Atlantic could have an effect on the proposed service.

GTE-CC represented that if compelled to produce the sought information the financial and merger information could be adequately protected by the protective procedures established in the September 14 Ruling. The roll-out plan in the hands of a competitor or potential competitor, GTE-CC alleges, would be injurious. GTE-CC admitted, however, that the roll-out plan was not a detailed plan, but rather one that was prepared to respond to a Staff data request. I therefore find that additional safeguards can be used to protect a general plan from injurious disclosure to marketing personnel of a potential competitor.

With regard to the additional request of counsel for Cox for certification that the identified documents are fully responsive, the Commission has clearly stated:

the Commission assumes that the responses to all data requests and interrogatories in this and every Commission proceeding are true, accurate, and complete to the best of the preparer's knowledge, information and belief.

Commonwealth of Virginia, at the relation of the State Corporation Commission, Ex Parte: Investigation of electric utility industry restructuring – Virginia Electric and Power Company, Case No. PUE960296, Order Granting Motion to Compel in Part at 14 (September 29, 1997). Yet, I share the surprise of counsel for Cox that no greater amount

of analysis has been documented than that contained in only three documents. Therefore, I find that in this case, it is reasonable to require GTE-CC to file a certificate verifying that no other documents exist that are responsive to the subject interrogatories, signed by counsel who conducted the search.

At this time, however, I decline to require counsel for GTE-CC to produce the documents identified on the privilege log for my in camera review.

Finally, I find that Protestants' Motion for Extension of the Procedural Schedule should be granted, and the procedural dates herein extended. Accordingly,

IT IS DIRECTED:

1) That, on or before September 21, 1998, GTE-CC answer the following interrogatories:

Cox Virginia Telecom, Inc.'s Second Set of Interrogatories and Requests for Production of Documents, dated August 11, 1998:

Questions 6(a), (c), & (d) (p. 7);
Question 8(b) (p. 8);
Question 9(e) (p. 8); and
Question 30(a) & (b) (p.12).

Cox Virginia Telecom, Inc.'s Third Set of Interrogatories and Requests for Production of Documents, dated August 12, 1998:

Question 38 (p. 7); and
Question 44 (c) (p. 9).

AT&T-VA data request dated August 12, 1998:

AT&T-VA 3: Please provide a copy of any documents, memoranda, correspondence (including electronic mail), or reports prepared by or for GTE-CC or its affiliates, or received by GTE-CC or its affiliates, pertaining to GTE-CC's business plans in light of and subsequent to the proposed merger of GTE Corporation and Bell Atlantic Corporation.

MCI Data Request # 1, Question 16:

Please provide any market entry plans and forecasts associated with GTE's Communications Corporation of Virginia and its

application to provide statewide service in Virginia, including but not limited to anticipated growth in market share and revenue and the geographical area in which such expansion is anticipated to take place.

2) That the roll-out plan should be produced subject to additional safeguards. Specifically, the roll-out plan shall be produced only to counsel and their designated regulatory or legal personnel and outside expert witness, employed or retained by the parties and under the direction and control of counsel, to review, but not to copy. Moreover, employees, officers, or directors of a party, or consultants or experts retained by a party, who have been and who are currently involved in marketing shall not be provided access to the information in the roll-out plan. Individuals who become reviewing representatives under this paragraph may not engage or consult in any marketing activities proscribed in the previous sentence for three (3) years after reviewing the roll-out plan;

3) That counsel for GTE-CC who conducted the search shall file, on or before September 21, 1998, a certificate verifying that no other documents exist that are responsive to the subject interrogatories;

4) That on or before October 1, 1998, each Protestant shall file with the Clerk of the Commission an original and twenty (20) copies of the prepared testimony and exhibits the Protestant intends to present at the hearing, and shall on the same day, mail a copy of the prepared testimony and exhibits to counsel for GTE-CC and other Protestants;

5) That the Commission Staff shall analyze the reasonableness of GTE-CC's application and present its findings in a Staff Report to be filed on or before October 19, 1998;

6) That on or before October 19, 1998, if necessary, the Commission Staff may file with the Clerk of the Commission an original and twenty (20) copies of any prepared testimony and exhibits it intends to present at the public hearing. A copy of the Staff's direct testimony shall be mailed to the counsel for the Applicant and to each Protestant;

7) That on or before October 26, 1998, the Applicant shall file with the Clerk of the Commission an original and twenty (20) copies of any testimony it expects to introduce in rebuttal to any direct prefiled testimony of Staff and Protestants. A copy of the rebuttal testimony shall be mailed to Staff and each Protestant by overnight delivery; and

8) That a public hearing, for the purpose of receiving prefiled testimony and the Staff Report, and cross examination thereon, will be held in the Commission's 2nd Floor Courtroom at 10:00 a.m. on November 3, 1998.

Deborah V. Ellenberg
Chief Hearing Examiner